IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3936 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAHWADI MAHILA KELVANI MANDAL

Versus

GUJARAT SECONDARY EDUCATION BOARD

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Appearance:

MR MUKESH R SHAH for Petitioner

MR AD OZA for Respondent No. 1

MR RM DESAI for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 24/03/2000

ORAL JUDGEMENT

Rule. Mr. A.D.Oza appears for respondent No.1 and Mr. R.M.Desai appears for respondent No.2 . They waive service of notice of rule. In the facts and circumstances, the matter is taken up for final hearing today.

The petitioner trust is registered under the Bombay Public Trusts Act, 1950 and it imparts education to girl students at village Shahwadi of City Taluka Ahmedabad. According to the petitioner, since there was no secondary school for girls in the nearby area, an application was made to the Gujarat Secondary Education Board (`Board' for short) for granting permission to start Ratanba Kanya Vidyalaya at Shahwadi . The application was made on 11th November, 1997. According to the petitioner,the application was required to be granted since all requisites were fulfilled. In spite of that, however, the Board rejected the application filed by the petitioner trust vide an order dated 12th January, 1999, Annexure `B'.

The Board, while rejecting the application, inter alia took into account two factors viz. that (1) there was no requisite accommodation for all students to be admitted in each class as required by Clause (13) (ii) of Regulation 9 of the Gujarat Secondary Education Regulations, 1974 (hereinafter referred to as `the Regulations'); and (2) no playground within reasonable distance from the school as required by clause 13 (iv) was available.

Being aggrieved by the order passed by the Board, the petitioner filed an appeal before the State Government . The State Government, in the impugned order, specifically stated that the application was rejected by the Board on two grounds viz. non-compliance with provisions of Clause 9 (13) (ii) and (iv). It is,however, pertinent to note that the State Government took into account altogether a new fact that there was likelihood of unhealthy competition as there was another school in the nearby locality.

Mr. Shah for the petitioner contended that the ground weighed with the State Government was never the subject matter of show cause notice, explanation or hearing before the Board. The Board did not reject the application of the petitioner on the ground of unhealthy competiton. The Board rejected the application of the petitioner on two grounds viz. non-compliance with provisions of Regulation 9 (13) (ii) and (iv) . The State Government did not record clear and categorical finding regarding any of the two grounds which weighed with the Board, but dismissed the appeal of the petitioner on a new ground that there was likelihood of unhealthy competition which was never made subject matter of decision before the Board. Mr. Shah submitted that

it was also the case of the petitioner before the Government that provisions of Regulation 9 (13) (ii) and (iv) had already been complied with and the defects were removed.

In my opinion, the petition deserves to be allowed . Regarding two defects held proved by the Board, there is no finding by the Government and it passed the order on a totally new ground which is not permissible.

For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The order passed by the Board and confirmed by the State Government are liable to be quashed and set aside. The Board will consider the matter afresh as to whether necessary requirements have been fulfilled by the petitioner trust. Since the application is for recognition of school, the Board is directed to consider the case and decide it as expeditiously as possible, preferably within four weeks from the receipt of the writ. Rule is made absolute. No order as to costs.

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parekh